

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**IN THE MATTER OF THE TRACKING
OF THE CELLULAR TELEPHONE
ASSIGNED CALL NUMBER 304-851-
0874**

Case No.

2:19mj1

Filed Under Seal

**IN THE MATTER OF THE USE OF AN
INVESTIGATIVE DEVICE (CELL SITE
SIMULATOR) TO LOCATE THE
CELLULAR DEVICE ASSIGNED CALL
NUMBER 304-851-0874**

Case No.

2:19mj 2

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
APPLICATIONS FOR SEARCH WARRANTS**

I, **Philip W. Efaw**, being first duly sworn, hereby depose and state as follows:

INTRODUCTION

1. I make the affidavit in support of applications for two search warrants for information pertaining to the location of the cellular telephone assigned call number **304-851-0874** ("Target Telephone") and in use by **Timothy Wimer**, who has committed supervised release violations under 18 U.S.C. § 3583(d), including distribution of controlled substances, and possession of heroin, methamphetamine, fentanyl, and prescription pills. The first warrant, requested under Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c)(1)(A), would command **United States Cellular**, a wireless telephone service provider headquartered at **8410 W. Bryn Mawr Ave., Suite 800, Chicago IL 60631** to produce location information in real time regarding the Target Telephone (the "Provider Tracking Warrant"). The second warrant, requested under Federal Rule of Criminal Procedure 41, would authorize law enforcement to employ an electronic investigative technique to determine the

location of the Target Telephone (the “Investigative Device Warrant”). The location information to be seized pursuant to the Provider Tracking Warrant is described herein and in Attachment B-1. The investigative technique to be used to locate the Target Telephone pursuant to the Investigative Device Warrant is described in Attachment B-2.

AFFIANT BACKGROUND

2. I am a Deputy United States Marshal with the United States Marshals Service (USMS), and have been since October 2002. I am an “investigative or law enforcement officer of the United States” within the meaning of 18 U.S.C. § 2510(7)—that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in 18 U.S.C. § 2516.
3. My duties as a Deputy U.S. Marshal involve enforcing federal laws in all jurisdictions of the United States, its territories and possessions. I am currently assigned to the U.S. Marshals Service for the Northern District of West Virginia, and routinely assigned warrants and fugitive investigations. I have conducted fugitive and criminal investigations throughout my career. I have been the affiant on numerous search warrants regarding the tracking and locating of federal fugitives based on their use of cellular phones. Throughout my career, I have encountered numerous methods that fugitives have used to hinder law enforcement efforts to track their whereabouts including, but not limited to, turning the phones on and off when not in use, having the phones subscribed in family members or friends’ names, and carrying and using multiple cellular phones on their person.

4. The facts in the affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. The affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about the matter.
5. Based on the facts set forth in the affidavit, there is probable cause to believe that the user of the Target Telephone, **Timothy Wimer**, has committed supervised release violations under 18 U.S.C. 3583(d), including distribution of controlled substances and possession of heroin, methamphetamine, fentanyl, and prescription pills. There is also probable cause to believe that the Target Telephone's location will assist law enforcement in arresting **Wimer**, who is a fugitive and thus a "person to be arrested" within the meaning of Federal Rule of Criminal Procedure 41(c)(4).
6. The Court has jurisdiction to issue the Provider Tracking Warrant for the records and location information sought pursuant to Rule 41 and 18 U.S.C. § 2703(c)(1)(A) because it is a court "with jurisdiction over the offense under investigation," 18 U.S.C. § 2711(3)(A)(i). The Court also has jurisdiction to issue the Provider Tracking Warrant and the Investigative Device Warrant pursuant to Rule 41 because the Target Telephone is located within the judicial district.

STATEMENT OF PROBABLE CAUSE

7. The United States (specifically, the United States Marshals Service) is investigating Timothy Juston Wimer, who is wanted by a federal arrest warrant for supervised release violations under 18 U.S.C. § 3583(d), including possession with intent to distribute heroin, methamphetamine, fentanyl, and prescription pills.

8. On 1/16/2019, in the Northern District of WV, a federal arrest warrant was issued for Timothy Juston Wimer by U.S. Court Clerk Cheryl Dean Riley on behalf of U.S. District Judge John S. Bailey.
9. On 01/15/2019, U.S. Probation Officers conducted a surprise home visit for Timothy J. Wimer at 505 Justamere Rd., Oldfield, WV 26845. A female believed to be Cassie Kesner left the residence shortly after U.S. Probation's arrival. During their search of the residence, U.S. Probation Officers discovered distribution quantities of multiple drugs (described as "handfuls" of drugs), drug paraphernalia consistent with distribution, and \$4,902 in cash. The West Virginia State Police was contacted in reference to multiple violations of state code based on the presence of illegal drugs. The West Virginia State Police seized the drugs, cash, drug paraphernalia and a cell phone. Wimer provided a Mirandized admission to the West Virginia State Police that he distributed controlled substances. The above summary outlines the probable cause basis for (12) violations of Wimer's federal supervised release and the federal warrant issued on 1/16/2019.
10. On 1/18/2018, Child Protective Services (CPS) conducted a visit of 505 Justamere Rd., Oldfield, WV 26845, in reference to Cassie Kesner's 18 month child (and the living circumstances at the residence). The Hardy County Sheriff's Office accompanied CPS to the residence, because a federal supervised release violation warrant that had been issued for Timothy Wimer on 1/16/2019. The Hardy County Sheriff's Deputies encountered Sherry Davy, Timothy Wimer's mother and the owner. Sherry Davy was cleaning out the trailer and indicated that Timothy Wimer had vacated and absconded from the residence on 1/15/2019, and did not know his

current whereabouts. Based on current information as of 2/11/2019, the West Virginia State Police is investigating Timothy Wimer for Sex Offender Registry violations specifically Failure to Update his Sex Offender Registry with his current address.

11. On 1/23/2018, Cassie Kesner called the Hardy County Prosecutor's Office in reference to her Child Protective Services case. The Hardy County Prosecutor's Office was aware of Timothy Wimer's wanted status on the federal warrant and noted that the Caller ID listed the caller as "Timothy Wimer 304-851-0874."
12. On 1/28/2019, a Maryland State License Plate Reader registered a hit for a known vehicle for Timothy Wimer, and an automated email notification was sent to Timothy Wimer's U.S. Probation Officer, indicating Wimer may have fled the state of West Virginia.
13. On 2/12/2019 DUSM Efaw and USMS TFO Mealey conducted interviews to locate Timothy Wimer in the Moorefield/Petersburg, WV area. Based on these interviews, your affiant concluded Cassie Kesner was currently in possession of cellphone 304-851-0874. DUSM Efaw attempted to contact Cassie Kesner for an interview pertaining to Wimer's whereabouts. A male answered the phone DUSM Efaw asked for Cassie Kesner, indicated Cassie was with him, and identified himself as "TJ", a known alias of Timothy Juston Wimer. DUSM Efaw immediately ceased contact with the cellphone.
14. The location of the target device may lead to the apprehension of Timothy Wimer. Thus far law enforcement has been unable to locate and apprehend Timothy Wimer, who is believed to have fled the area.

AVAILABILITY OF CELL PHONE LOCATION INFORMATION

15. The recipient of the Provider Tracking Warrant, **United States Cellular**, is a company that provides cellular telephone service to the general public, and is therefore a provider of “electronic communication service” pursuant to 18 U.S.C. §§ 2510(15) and 2703(c). I have been advised that **United States Cellular**, which services the Target Telephone, has the technical means promptly to generate and record latitude and longitude data, to include Global Positioning System (GPS), Round Trip Time Location Information (RTT), and Precision Location Information (PLI), with respect to a specified wireless telephone by measuring its position relative to other known reference points. The information provided can be used to verify the vicinity of the Target Telephone. It will not necessarily provide the Target Telephone’s exact pin-point location. For example, the information provided by **United States Cellular** will not indicate where the user is precisely located within a particular residence, but instead may provide the general area where the user is located and is an approximate range which can be as low as a few meters, and up to thousands of meters of the user.
16. I also know that providers of cellular telephone service have technical capabilities that allow them to collect and generate information about the locations of the cellular telephones to which they provide service, including cell-site data, also known as “tower/face information” or “cell tower/sector records.” Cell-site data identifies the “cell towers” (i.e., antenna towers covering specific geographic areas) that received a radio signal from the cellular telephone and, in some cases, the “sector” (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile

or more apart, even in urban areas, and can be 10 or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data provides an approximate location of the cellular telephone but is typically less precise than other types of location information, such as E-911 Phase II data or Global Positioning Device ("GPS") data. I also know that wireless providers typically collect and retain cell-site data pertaining to cellular phones to which they provide service in their normal course of business in order to use the information for various business-related purposes.

17. Based on my training and experience, I also know that wireless providers typically collect and retain information about their subscribers in their normal course of business. The information can include basic personal information about the subscriber, such as name and address, and the method(s) of payment (such as credit card account number) provided by the subscriber to pay for wireless telephone service. I also know that wireless providers typically collect and retain information about their subscribers' use of the wireless service, such as records about calls or other communications sent or received by a particular phone and other transactional records, in their normal course of business.

USE OF INVESTIGATIVE DEVICE (CELL-SITE SIMULATOR)

18. To facilitate execution of the Investigative Device Warrant, law enforcement officers may use an investigative device or devices capable of broadcasting signals that will be received by the Target Telephone or receiving signals from nearby cellular devices, including the Target Telephone. Such a device may function in some

respects like a cellular tower, except that it will not be connected to the cellular network and cannot be used by a cell phone to communicate with others. The device may send a signal to the Target Telephone and thereby prompt it to send signals that include the unique identifier of the device. Law enforcement may monitor the signals broadcast by the Target Telephone and use that information to determine the Target Telephone's location, even if it is located inside a house, apartment, or other building.

19. The investigative device may interrupt cellular service of phones or other cellular devices within its immediate vicinity. Any service disruption to non-target devices will be brief and temporary, and all operations will attempt to limit the interference with such devices. In order to connect with the Target Telephone, the device may briefly exchange signals with all phones or other cellular devices in its vicinity. These signals may include cell phone identifiers. The device will not complete a connection with cellular devices determined not to be the Target Telephone, and law enforcement will limit collection of information from devices other than the Target Telephone. To the extent that any information from a cellular device other than the Target Telephone is collected by the law enforcement device, law enforcement will delete that information, and law enforcement will make no investigative use of it absent further order of the Court, other than distinguishing the Target Telephone from all other cellular devices.

AUTHORIZATION REQUEST

20. Based on the foregoing, I request that the Court issue the proposed warrants, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c).

defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of Target Telephone could jeopardize the apprehension of **Wimer**, giving him/her an opportunity to change patterns of behavior or flee.

25. I further request that the Court order that all papers in support of the application, including the affidavit and search warrant, be sealed seal for one year from the date of the entry of the Order entered herein. These documents discuss an ongoing fugitive apprehension matter that is not public, and which discusses law enforcement's conversations with a confidential source. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.



Philip W. Efaw
Deputy United States Marshal

Sworn and subscribed before me on February ¹⁵ 2019.

By phone - Elkus W
AUSA Andy Logan
also on cell



Michael J. Alo
United States Magistrate Judge

21. I further request that the Court direct **United States Cellular** to disclose to the government any information described in Attachment B-1 that is within the possession, custody, or control of **United States Cellular**. I also request that the Court direct **United States Cellular** to furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the information described in Attachment B-2 unobtrusively and with a minimum of interference with **United States Cellular**.
22. **United States Cellular's** services, including by initiating a signal to determine the location of Target Telephone on **United States Cellular's** network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall reasonably compensate **United States Cellular** for reasonable expenses incurred in furnishing such facilities or assistance.
23. I further request that the Court authorize execution of both the Provider Tracking Warrant and the Investigative Device Warrant at any time of day or night, owing to the potential need to locate the Target Telephone outside of daytime hours. In particular, allowing execution of the warrants in the nighttime (when **Wimer** is likely to be immobile) will allow officers to ascertain his/her location with greater precision.
24. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrants to delay notice until 30 days after the collection authorized by the warrant has been completed. The delay is justified because there is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as